

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Determination of Critical Habitat for Cape Sable Sparrow

The Director, United States Fish and Wildlife Service, hereby issues a Proposed Rulemaking for the Cape Sable Sparrow, an Endangered Species, pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543). An interpretation of the term Critical Habitat was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765).

The term Critical Habitat was interpreted in the above publication (40 FR 17764) as meaning habitat necessary to the normal needs or survival of a species. All species of wildlife have their own Critical Habitat: it already exists in nature, and in most cases has existed for countless centuries. The precise location and perimeters of such habitat is not generally known to the public and government agencies. However, such identification is essential in administering and managing Critical Habitats as an important means for protecting species already determined to be Endangered or Threatened, as well as restoring such species to a point at which they are no longer Endangered or Threatened. The function of the Fish and Wildlife Service is to biological delineate such habitat for Endangered and Threatened Species, with legally meaningful boundaries, so that other Federal agencies may conveniently refer to this information in following their responsibility under Section 7 of the Act which states as follows:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

(The term Secretary as used above means the Secretary of Commerce and/or the Secretary of the Interior.)

Although disagreements may arise regarding what habitat is actually necessary for a species, or how to most accurately delineate an area, the final determination must express a consensus of the best biological information available.

A Critical Habitat designation points out specific areas within the United States where Federal agencies may have to assess their actions relative to possible effects on Endangered Species. No specific kinds of actions would be affected, regardless of the extent of the area designated as Critical Habitat, unless such actions actually could be considered detrimental to the species involved. It is emphasized further that there may be many kinds of actions which can be carried out within the Critical Habitat of a species that would not be expected to result in such reduction in the numbers or distribution or otherwise adversely affect such species.

This Proposal involves the determination of Critical Habitat for the Cape Sable Sparrow, an Endangered Species.

BACKGROUND

The Cape Sable Sparrow, *Ammodramus maritima mirabilis* was discovered in the marshes of Cape Sable, Florida, in 1918. The range was expanded in 1928 when the species was located in marshland southwest of Big Cypress Swamp. Until 1935, the Cape Sable Sparrow was observed on the coastal prairie of Cape Sable extending from Flamingo to Northwest Cape, Monroe County, Florida. In 1932, however, a severe hurricane covered Cape Sable with about 2 to 3 meters of saltwater, and although the sparrows were reportedly seen after the storm, the Cape's population was believed to have been extirpated.

Again in 1942 the species was observed in an area south and southwest of the Big Cypress Swamp, however, much of this population was believed destroyed by extensive fires in the early sixties. Thirty-five years after the Cape Sable hurricane (1935), the population was rediscovered on the Cape in a prairie southwest of Little Fox Lake, but today both populations have declined to a vestigial population spread over a wide area.

Today, the species is known to be present in only three isolated localities: the Fox Lakes area of Cape Sable; Taylor Slough; and the marshes of the Ochopee-Turner river area in Collier County, Florida. Cape Sable Sparrows have been found in four different habitats in these areas: *Muhlenbergia* prairie, *Cladium* prairie, irregularly distributed *Spartina* prairie, and *Spartina* prairie with a clumped distribution.

The Taylor Slough population, which contains the largest known population of

approximately 1,900 to 2,800 birds, occupies two different types of prairie. *Muhlenbergia* prairie and *Cladium* prairies. Floristically, the *Muhlenbergia* prairies of Taylor Slough are the most heterogeneous areas utilized by the Cape Sable Sparrows, and support the largest and most viable sparrow populations. Most of the Taylor Slough type habitat is located within the Everglades National Park, where the species is protected.

The size of the habitat of the Taylor Slough population is now declining, and habitat alteration appears to be the greatest threat to the race, particularly the destruction of open prairies by invading exotic trees, (*Casuarina* sp., *Melaleuca quinquenervia*, and *Schinus terebinthifolia*). Observations of these exotics indicate that once a portion of a prairie is inundated by any of these exotic trees, their growth rate is sufficient to alter that portion of the habitat beyond utilization by Cape Sable Sparrows within several years.

Although the Cape Sable Sparrow and its habitat is protected within the Everglades National Park, there has been little effort toward managing the same. Also, real estate development is now encroaching on the remaining Taylor Slough range outside the Park.

In view of the fact that the formerly large Bib Cypress population and the Cape Sable population each appear to have declined to a small relict population composed of a few widely spaced individuals, and the Taylor Slough population is presently the most vigorous, the Director proposes to determine 45,600 acres of the Taylor Slough area in Dade, Collier, and Monroe counties as Critical Habitat. Of the 36,500 acres, approximately 27,700 acres are located within the Everglades National Park and about 8,800 acres are privately owned lands east of the Park.

BASIS FOR DETERMINATION

The below delineated areas are being proposed as Critical Habitat for the Cape Sable Sparrow (*Ammodramus maritima mirabilis*):

Florida. Taylor Slough area outside the Everglades National Park: T55S R37E Sec. 25, 36; T55S R38E Sec. 19, 20, 29-32; T56S R37E Sec. 1, 2, 11-14, 23, 24; T56S R38E Sec. 5-8, 18, 19; T57S R37E Sec. 5-8; T58S R38E Sec. 29-32. Taylor Slough area within the Everglades National Park: T57S R36E; T57S R37E; T58S R35E; T38S R36E; T58S R37E; T58S R38E; T59S R35E; T59S R36E; T59S R37E.

The Critical Habitat areas outlined above contain the largest known concentration of Cape Sable Sparrows in the United States, and are the only areas

that can presently be defined as composing a major viable population. Should more precise information regarding other sites within the proposed zone or should range expansions or reintroductions of the sparrow occur, the proposed Critical Habitat could be changed.

PUBLIC COMMENTS SOLICITED

The Director intends that finally adopted rules be as responsive as possible to the conservation of the Critical Habitat of Endangered and Threatened Species. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned government agencies, and private interests on these Proposed Rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this Proposal. An environmental assessment is being prepared in conjunction with this proposal and will be available for public inspection before final rule-making.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received no later than October 11, 1976 will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's Office in Suite 600, 1612 K Street, NW., Washington, D.C.

Accordingly, it is hereby proposed to amend 50 CFR Part 17 to determine Critical Habitat for the following Endangered Species, as shown below.

Dated: July 8, 1976.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

1. Amend the table of contents in 50 CFR, Part 17 by adding a new § 17.89 as follows:

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Subpart F—Critical Habitat

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(Sec. 17.89 Cape sable sparrow.)

2. Amend Subpart F of 50 CFR Part 17 by adding a new § 17.89 as follows:

§ 17.89 Cape sable sparrow.

(a) The following areas are Critical Habitat for the Cape Sable Sparrow (*Ammospiza maritima mirabilis*):

Florida. Taylor Slough area in Dade, Collier, and Monroe Counties with the following components, outside the Everglades National Park: T55S R37E Sec. 25, 36; T55S R38E Sec. 19, 20, 29-32; T56S R37E Sec. 1, 2, 11-14, 23, 24; T56S R38E Sec. 5-7, 18, 19; T57S R37E Sec. 5-8; T58S R38E Sec. 29-32. The Taylor

Slough area within the Everglades National Park: T57S R36E; T57S R37E; T58S R35E; T58S R36E; T58S R37E; T58S R38E; T59S R35E; T59S R36E; T59E R37E.

(b) Pursuant to section 7 of the Act, all Federal agencies must insure that actions authorized, funded, or carried out by them do not result in the destruction or adverse modification of this Critical Habitat area.

[FR Doc.76-20261 Filed 7-13-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 989]

[Docket No. AO-198-A8]

RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Decision on Proposed Further Amendment of the Marketing Agreement and Order

A public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 989, as amended (7 CFR Part 989), (hereinafter referred to collectively as the "order"), regulating the handling of raisins produced from grapes grown in California. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Fresno, California, on March 9, 1976, pursuant to notice thereof issued on February 18, 1976.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on June 1, 1976, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. No exceptions were filed.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

Material issues. The material issues of record are as follows:

(1) Abolish the Raisin Advisory Board and the Raisin Administrative Committee and establish a new Raisin Administrative Committee and an Executive Operations Committee.

(2) Change the definition of the term "crop year" to mean the 12-month period beginning with August 1 of any year and ending with July 31 of the following year in lieu of the present crop year of September 1 through August 31.

(3) Change the volume regulation system to provide more flexibility in allocating free tonnage; and provide for sales to handlers by the committee of reserve tonnage for use as free tonnage to augment the free tonnage released by the free percentage.

(4) Require the committee to consider a marketing plan for reserve raisins each year and change the date by which the committee must dispose of reserve tonnage of the previous crop year from

November 1 to May 1 of the subsequent crop year.

(5) Provide that the committee may replace free tonnage raisins sold in reserve tonnage outlets at any time prior to the first offer of reserve tonnage from a new crop year rather than requiring such offer can be made only after September 1.

(6) Provide that a change of marketing conditions may be used as a basis for selling reserve tonnage raisins to handlers to sell as free tonnage.

(7) Make such changes in the order as may be necessary to bring the entire order, as amended, into conformity with the amendatory action resulting from the hearing.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Sections 989.26 through 989.52 of the marketing agreement and order (hereinafter, in this text of the Findings and conclusions, collectively referred to as the "order") contain provisions relating to establishment, membership (including changes in membership), terms of office, nomination, selection, powers, duties, procedure, and such other provisions as are necessary for establishment and operation of the Raisin Advisory Board and the Raisin Administrative Committee. The order should be amended to abolish the Raisin Advisory Board and the Raisin Administrative Committee as they are now established under the order. In lieu of these bodies, a new Raisin Administrative Committee and an Executive Operations Committee should be established.

When the order was promulgated in 1949, a Raisin Advisory Board was established to advise the Raisin Administrative Committee. The Raisin Administrative Committee has responsibility for operation and administration of the order, and includes members from all segments of the industry. The industry has concluded that the Advisory Board is superfluous because it tends to duplicate committee discussions and the advisory aspects of the Board are no longer necessary.

The record evidence indicates that the industry desires to retain a broad industry-wide base for decision making. Thus, a new Raisin Administrative Committee (hereinafter referred to as the "Committee") should be established consisting of 47 members (and their alternates). It is believed that the committee with a membership of this size is administratively practicable. The record indicates that this committee should assume the powers and duties of the former board and retain most of the powers and duties of the present committee. Therefore, most of the provisions of the order currently applicable to the board would be made applicable to the new enlarged committee and would be carried forward in the amended order with little or no change, apart from minor editorial revisions and rearrangement of the sequence of order provisions. The sole substantive change would be creation of

an Executive Operations Committee as discussed in this material issue.

The order should be amended to provide for definition and establishment of an Executive Operations Committee. This should be a 15-member (with alternate members) group selected from among the members of the committee. This smaller body would be vested with the power to receive, investigate, and report to the Secretary, complaints of violations of the order and to perform such other functions as are assigned by the committee. Functions assigned to the Executive Operations Committee by the committee would be essentially administrative in nature, it being intended that the committee retain all policy-making functions. The committee should be empowered to over-rule any action taken by the Executive Operations Committee. The evidence of record indicates that disagreement or conflict between the two bodies is not likely and, indeed, would rarely occur.

Accordingly, in order to effectuate the foregoing, § 989.26 of the current order providing for the establishment and membership of the Raisin Advisory Board should be revised and made applicable to the new committee. This section should be revised to provide for a committee consisting of 47 members. The make-up of the new committee would be the same as is now applicable to the board under the current order and currently effective administrative rules and regulations. However, the number of members would be increased from 46 members to 47 members. The additional member would be a public member who should be nominated by the committee and selected by the Secretary. The proponents indicated that the industry would likely benefit from the judgment and knowledge that a public member could contribute to industry decisions; in addition, such member could be instrumental in the enlightenment of the general public with respect to the nature and operation of the raisin marketing order.

The following sections of the current order applicable to the Raisin Advisory Board should be made applicable to the new Raisin Administrative Committee. There are slight revisions chiefly changing the word "board" to "committee", but no substantive changes unless noted:

(a) Section 989.26b, "Changes in producer representation", should be amended and become § 989.26a of the amended order.

(b) Section 989.26a, "Changes in handler representation", should be amended and become § 989.26b of the amended order.

(c) Section 989.26c, "Changes in dehydrator representation", should be appropriately amended to reflect the proposed change.

(d) Section 989.27, "Eligibility", should be appropriately amended to reflect the proposed change.

(e) Section 989.28, "Term of office", should be appropriately amended to reflect the proposed change.

(f) Section 989.29, "Initial members and nomination of successor members,"

should be appropriately amended to reflect the proposed change. The record evidence indicates that those persons who are serving as members and alternate members on the Raisin Advisory Board when the amended order becomes effective should automatically become the members and alternate members of the new Raisin Administrative Committee and those serving on the current Raisin Administrative Committee should become members of the Executive Operations Committee. Since all such members were elected by members of the particular group they represent and all were selected by the Secretary, there would be no need to re-elect and re-select a new committee. However, because there is no public member (and alternate) on the current board, it would be necessary that such member (and alternate) be elected and selected when the amended order becomes effective.

(g) Section 989.30, "Selection," should be amended to provide for selection of a public member. It should also add a reference to new § 989.26c regarding changing dehydrator representation.

(h) Section 989.31, "Failure to nominate" need not be changed.

(i) Section 989.32, "Acceptance," should be appropriately amended to reflect the proposed change.

(j) Section 989.33, "Alternate members," need not be changed.

(k) Section 989.34, "Vacancies," should be appropriately amended to reflect the proposed change.

(l) The provisions for calling meetings of the Board are currently contained in § 989.35. These provisions should be included in new § 989.38, "Procedure." Section 989.35 of the amended order should be entitled "Powers," and contain the powers currently contained in § 989.49, with one exception. In the current order, § 989.49(c) provides that the Raisin Administrative Committee shall have the power to receive, investigate and report to the Secretary, complaints of violations of this part. This power would be a power of the new Executive Operations Committee and would be included in § 989.51 of the amended order.

(m) Section 989.36, "Duties," should be amended to contain those duties currently contained in § 989.50, with minor changes. In § 989.50(a) of the Raisin Administrative Committee's duties, the committee is required to act as an intermediary between the Secretary and any producer, packer, dehydrator, or processor. The record indicates that the committee should also act as an intermediary between the Secretary and any cooperative bargaining association. Therefore, § 989.36(a) should include cooperative bargaining associations.

Section 989.50(g) of the Raisin Administrative Committee's duties requires it to cause the books of the committee to be audited by certified public accountants at least once each crop year. There have been instances in the past where this requirement has raised administrative problems. Reserve pool sales and shipments do not normally conform with a crop year. When a reserve pool operation extends beyond the end of a crop

year, an interim audit at the close of the crop year is required, and then an additional audit is necessary when the pool is closed. If it is apparent that a pool will be closed within a reasonably short time after the end of a crop year, it is reasonable to avoid the additional cost of such interim audit. The revision in this requirement would provide for such event.

Paragraph (j) of current § 989.50 prescribes the committee duties regarding compliance activity. Since this duty would be made the responsibility of the new Executive Operations Committee, it should not be included in § 989.35. Section 989.36 of the current order specifies the duties of the Raisin Advisory Board. The duties regarding nominations and certifications of nominations would be assumed by the new committee and should be included in paragraph (j) of § 989.36. Those duties dealing with making recommendations on marketing policy and free and reserve percentages would be deleted as unnecessary duplication because the committee is already required to recommend such things to the Secretary under the volume regarding provisions of the order.

(n) At this point, § 989.51, "Obligation", should be renumbered § 989.37 in the amended order and a new § 989.38, "Procedure", should be added to the amended order. The new § 989.38 combines present §§ 989.35, 989.37, 989.52, with two minor changes. One change increases the quorum requirement by one member to take into account the increase in the number of committee members over current membership. The second change deletes authorization for voting by mail or telegraph. The 47-member committee would make mail or telegraphic voting impracticable because of its size. It is intended that the committee must have an assembled meeting to conduct any business.

(o) Many of the current order provisions relative to the Raisin Administrative Committee would be carried forward into the amended order and made applicable to the new Executive Operations Committee. Some minor changes are recommended and some rearrangement and renumbering appear necessary for continuity. Section 989.39 of the current order relates to the establishment and membership of the Raisin Administrative Committee. In the amended order, this section (§ 989.39) would be titled "Compensation and expenses" and be applicable to the new Raisin Administrative Committee and the Executive Operations Committee. The content of the new § 989.39 would be that of the current § 989.48.

(p) The provisions applicable to the current Raisin Administrative Committee should be made applicable, with some minor editorial and conforming changes, to the new Executive Operations Committee. The provisions should be contained in amended § 989.43, Establishment and membership; § 989.43a, Changes in producer representation; § 989.43b, Changes in handler representation; § 989.43c, Changes in dehydrator representation; § 989.44, Term of office; § 989.45, Nomination; § 989.46, Selection;